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OFFICE OF PETITIONS

In re Patent No. 7,351,136 :
Nelson et al. : DECISION ON LETTER
Issue Date: April 1, 2008 : REGARDING
Application No. 10/809,286 : PATENT TERM ADJUSTMENT
Filed: March 25, 2004 : and
Attorney Docket No. : NOTICE OF INTENT TO ISSUE
12477-016001 : CERTIFICATE OF CORRECTION

This is a decision on the "LETTER REGARDING PATENT TERM ADJUSTMENT," filed on January 11, 2008. The letter is being construed as a letter filed pursuant to patentees' duty of good faith and candor, patentees request that the Patent Term Adjustment for the above-identified patent be reviewed for accuracy.

The request for reconsideration of the patent term adjustment indicated in the patent is GRANTED.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of one hundred fifty (150) days.

On October 12, 2007, the Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) was mailed, stating that the Patent Term Adjustment was 0 days. This delay was calculated as follows: a delay of 26 days for the mailing of a non-final office action on April 12, 2006, four (4) months and (26) days after the filing of a response on November 17, 2005. This was reduced by applicant delay as follows: a delay of 65 days resulting from the filing of a response to the Notice to File Missing Parts mailed on June 8, 2004, three (3) months and 65

days after the mailing of the Notice to File Missing Parts on June 8, 2004; a delay of 51 days for the filing of a response to a non-final Office action on November 17, 2005, three (3) months and 51 days after the mailing of the non-final Office action mailed on June 27, 2005; a delay of one (1) day for the filing of a response to a non-final Office action on July 13, 2006, three (3) months and (1) day after the mailing of a non-final Office action on April 12, 2006; and a delay of 23 days for the filing of a response to a non-final Office action on July 23, 2007, three (3) months and 23 days after the mailing of the non-final Office action on March 30, 2007.

On January 11, 2008, the issue and publication fees were filed, along with the subject letter regarding patent term adjustment.

Applicant states that the calculation of Applicant delay is believed to be too low.

On April 1, 2008, the above-identified application matured into U.S. Patent No. 7,351,136.

The Patent issued with a revised Patent Term Adjustment of one hundred fifty-one (151) days based on an adjustment for PTO delay of three hundred seventy-three (373) days reduced by two hundred twenty-two (222) days of applicant delay. This additional delay was calculated as follows: 347 days of Office delay for issuance of the patent four (4) months and 347 days after the payment of the issue fee on January 11, 2008. This period was reduced by a total of 82 (40+42) days for the filing of corrected drawings and an amendment after a notice of allowance, both mailed on January 11, 2008, 82 days prior to the issuance of the patent.

Applicant states no basis for a reduction in the patent term adjustment.

A review of the record reveals that the Notice of Appeal filed on March 5, 2007, was filed three (3) months and (1) day after the mailing of the final Office action mailed on December 4, 2006. Accordingly, the patent term adjustment should be reduced by one (1) day for applicant delay pursuant to 37 CFR 1.704(b).

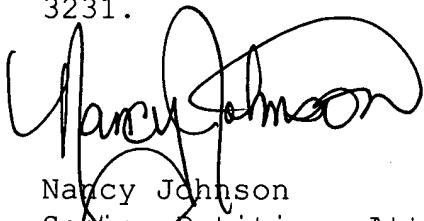
In view thereof, the correct determination of PTA at the time of the issuance of the patent is one hundred fifty (150) days (373

(26+347) days of PTO delay, reduced by two hundred twenty-three (223) (65+51+1+1+23+40+42) days of Applicant delay). To the extent that applicants are aware of any specific error in the PTA calculation, applicants should so advise the Office.

As the instant letter was submitted to advise the Office of an error in Applicant's favor, the \$200.00 application fee under 37 CFR 1.705(b) was not required, and has not been charged.

The application file is being forwarded to the Certificate of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a Certificate of Correction indicating that the term of the above-identified patent is extended or adjusted by ONE HUNDRED FIFTY (150) days.

Telephone inquiries specific to this matter should be directed to Douglas I. Wood, Senior Petitions Attorney, at (571) 272-3231.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Encl: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,351,136 B2

DATED : April 1, 2008

INVENTOR(S) : Chad Nelson

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (151) days

Delete the phrase "by 151 days" and insert – by 150 days--